

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

SUMMONS FOR JUDGMENT NO. 875 OF 2003

IN

SUM. SUIT NO.2339 OF 2003

Bulu Harish Chandani

Plaintiff

vs.

Boston Cyberkids Computer Learning
Systems Pvt. Ltd. & ors.

Defendants

Mr.S.I. Memon for the plaintiff.

Mr.Arif Bookwala with Mr.Gautam Ankhad with Ms.Aaradhana
Bhanushali for the defendants.

CORAM : S.U. KAMDAR,J.

DATED : 24th October 2005

P.C.

The claim in the present suit is for recovery of the sum of Rs.14,69,000/- . The claim arises under five cheques which are at Exhibits C, D, E, F and G. The principal claim amount under five cheques is Rs.10,13,500/-. It is the case of the plaintiff that under the agreement dated 23.1.1998 the plaintiff was given franchise rights of conducting computer learning system by the defendant no.1 and on termination of the said agreement, the accounts were settled between the parties and the aforesaid five cheques were issued. However, it is the case of the defendant that the said cheques were not issued pursuant to any such arrangement, but they were issued as a blank cheque duly signed towards the payment of the amount for his share under the said franchise agreement. My attention has been drawn to clause 6(d) of the said agreement which

interalia provides that the entire amount received by the franchisee shall be deposited in the account of the franchisor and the amount so deposited will be thereafter distributed between the franchisee and franchisor through internal Bank transfer or by issuance of the cheque. It is the case of the defendant that in compliance of the said clause 6(d)(1), the blank cheques were issued to the plaintiff which has been mis-used by the plaintiff by fabricating the letter dated 16th June 2000. My attention is also drawn by the defendant in respect of the claim over Rs.7 lacs which has been raised by the plaintiff. Admittedly the said claim is towards the relinquishment of the right of the franchisee in Bandra area and for not conducting any activities for next three years. It is contended that this part of the amount does not arise under the franchisee agreement and, therefore, the said claim cannot be granted.

2. I have considered the rival contentions between the parties and I am of the opinion that in so far as the claim pertaining to Rs.2,13,500/- arising out of under items A, B and C of paragraph 9 of the plaint, the same arises under the written agreement between the parties and there is no substantial disputes on merits in respect of the said claim. The dispute is in respect of the amount of Rs.7 lacs as mentioned in paragraph 9(d) of the plaint. I am, therefore, of the opinion that the defendant should be granted conditional leave to defend

on the condition of depositing a sum of Rs.4 lacs within a period of four weeks from today failing which the plaintiff will be entitled to decree. These were the claims also arise under a dishonoured cheque and, therefore, I am of the opinion that the aforesaid order should be passed.

3. In that view of the matter, I direct the defendant to deposit a sum of Rs.4 lacs in this Court within a period of four weeks from today failing which the plaintiff will be entitled to decree. The amount if so deposited, the Prothonotary and Senior Master is directed to invest the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court. Summons for judgment disposed of accordingly.

4. Suit transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from the date of deposit. Affidavit, list of documents to be filed within four weeks thereafter. Inspection and discovery within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.

(S.U. KAMDAR,J.)